UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK BAKER,

Plaintiff,

v.

UNITED STATES FOOD and DRUG ADMINISTRATION, et al.,

Defendants.

No. 2:24-cv-02558-DC-SCR

FINDINGS & RECOMMENDATIONS

Plaintiff Mark Baker is an advocate for regulation of LED vehicle headlights and sues the government agencies allegedly responsible for such regulation. Plaintiff is proceeding pro se in this matter, which is referred to the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Before the Court is Defendants' motion to dismiss Plaintiff's complaint—which contains two causes of action—pursuant to Federal Rule of Civil Procedure 12(b)(1) & (6) (ECF No. 9). Opposition and reply briefs were filed. ECF Nos. 10 & 14. The motion was submitted to the Court without oral argument.

The Court now recommends that the motion be GRANTED. The Court finds that Plaintiff has standing to pursue his first cause of action, which concerns a statutory requirement that the Secretary of Health and Human Services ("Secretary") confer with other agencies about regulation of radiation-emitting devices, but fails to state a claim on which relief can be granted for that cause of action. The Court also finds that Plaintiff lacks standing to pursue his second

cause of action, which concerns a statutory requirement that the Secretary establish a standards committee on radiation-emitting devices. Given that Plaintiff has already filed and voluntarily dismissed a related lawsuit—making the complaint at issue here the substantive equivalent of an amended complaint—and given that Plaintiff has not proposed additional facts that might cure the deficiencies identified in Defendants' motion to dismiss, the undersigned recommends that leave to amend not be granted.

I. Background and Procedural History

Plaintiff has for years advocated for the Food and Drug Administration ("FDA") and the National Highway Transportation Safety Administration ("NHTSA"), both defendants in this action, to regulate LED headlights, also referred to as "headlamps." The Soft Lights Foundation, of which Plaintiff is the founder and president, submitted multiple citizen petitions to the FDA seeking such regulations. ECF No. 1 at ¶ 26. In a "Final Response Letter" issued in response to four of those petitions, the FDA denied, *inter alia*, the Foundation's request that the FDA "regulate electromagnetic radiation in the visible portion of the spectrum emitted by products that use [LEDs] and that these regulations set restrictions on spatial non-uniformity, chip-level peak luminance and peak radiance, spectral power distribution, and square wave flicker to protect the physical and psychological health, safety, comfort, and civil rights of those who are negatively impacted by LED light." ECF No. 9-2 at 2.[1] The FDA denied similar requests as to pulsing, flashing, and strobing LEDs, as to LEDs "that are used on vehicles," and as to LED street lights. *Id*. at 3. The FDA provided several reasons for denying the requests, including that (1) "regulations for specific performance standards for every type of electronic product" are not "necessary given the effectiveness of existing mitigations in addressing unnecessary radiation and alternative approaches to protect public health" and "the fact that most products do not produce types of levels of unnecessary radiation that pose a risk to public health"; (2) specific standards

[1] Plaintiff discusses those petitions and the agency's response letter in the complaint in this case. ECF No 1 at ¶¶ 25-27. The Court deems them incorporated by reference. *See Khoja v. Orexigen Therapeutics, Inc*., 899 F.3d 988, 1002-1003 (9th Cir. 2018). Even if not incorporated by reference, they would be subject to judicial notice, for the reasons described by Defendants. ECF No. 9-1 at 2 n.1.

for LEDs are not necessary "due to their long history of safety with respect to the visible wavelengths being emitted," and (3) the Soft Lights Foundation had provided insufficient evidence that the requested standards are necessary. *Id*. at 6-7.

Plaintiff also sent a letter and email to the NHTSA regarding that agency's regulation of LED headlamps. ECF No. 1 at ¶ 28. NHTSA responded in a letter—logged as Interpretation 571.108-NCC-230201-001, LED Headlights—explaining that "LEDs are allowed to be used as a light source in integral beam headlamps as long as the headlamp conforms to all applicable headlamp requirements in" the agency's headlamp regulation, known as Standard No. 108, 49 C.F.R. § 571.108. Interpretation 571.108-NCC-230201-001, LED Headlights (Feb. 13, 2024).[2] NHTSA acknowledged the problem of consumers' illegal replacement of headlamp bulbs with after-market LED bulbs, but noted that NHTSA "generally does not regulate modifications individuals make to their own vehicles," which instead is a matter "left to State law to address[.]" *Id*.

On September 23, 2024, Plaintiff filed this action, suing the FDA, the NHTSA, officials within each agency, and the Secretary.[3] Plaintiff alleges that Defendants have failed in their statutory duty to "maintain a liaison on techniques, equipment, and programs for testing and evaluating Visible Light radiation from Light Emitting Diode (LED) vehicle headlamps." ECF No. 1 at ¶ 1. Additionally, Plaintiff alleges that the FDA unlawfully dissolved the Technical Electronic Product Radiation Safety Standards Committee (hereafter the "Safety Committee"). *Id.* Plaintiff contends he has suffered injury via eye pain and "neurological and psychological trauma" from being exposed to the LED headlamps and that his injury is redressable because the

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[2] A copy of NHTSA's response letter to Plaintiff is available here: https://perma.cc/M757-7UHF. That letter is subject to incorporation by reference or judicial notice for the same reasons that apply to the FDA petitions and response letter.

[3] Plaintiff filed an earlier action, *Baker v. FDA, et al.*, 2:24-cv-00278-DC-SCR, that raised similar claims concerning the alleged lack of regulation of radiation in LED light bulbs. Shortly after the hearing on a motion to dismiss that action, Plaintiff moved to voluntarily dismiss it. That same week, he filed the instant Complaint. The two cases were related. *See* Case No. 2:24-cv-00278-DC-SCR, ECF No. 24. The Court granted voluntary dismissal in the prior action, and the Court never adjudicated Defendant's motion to dismiss in that action.

FDA could be ordered to reconstitute the Safety Committee and to maintain a liaison to address health and safety impacts of LED vehicle headlamps. *Id*. at ¶¶ 18-19.

On December 3, 2024, Defendants moved to dismiss the action, arguing that Plaintiff lacks standing and fails to state a claim. ECF No. 9-1. The motion is fully briefed and was submitted without oral argument.

II. Legal Standards

A. Motion to Dismiss Under Rule 12(b)(1)

A motion under Rule 12(b)(1) challenges the court's subject-matter jurisdiction over the action. Such a jurisdictional challenge can be either facial or factual. *Leite v. Crane Co*., 749 F.3d 1117, 1121 (9th Cir. 2014). "A facial attack accepts the truth of the plaintiffs allegations but asserts that they 'are insufficient on their face to invoke federal jurisdiction.'" *Id.*, citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). If a facial challenge is made, the court draws all reasonable inferences based on the plaintiff's allegations. *See Williams v. A&M Bros, LLC*, 2023 WL 4747481 at *2 (E.D. Cal. July 25, 2023) (citation and quotation omitted). By contrast, in a factual attack, the challenger disputes the truth of plaintiff's factual allegations, usually by introducing evidence outside the pleadings. In resolving a factual attack on jurisdiction, the court may review evidence beyond the complaint and resolve factual disputes itself. *Id.* at 1121-22.

B. Motion to Dismiss under Rule 12(b)(6)

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In determining whether a complaint states a claim on which relief may be granted, the court accepts as true all well-pleaded factual allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1086 (9th Cir. 2020). However, the court need not assume the truth of legal conclusions cast in the form of factual allegations. *Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009). While Rule 8(a) does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Moreover, it is inappropriate to assume that the plaintiff "can prove facts that it has not alleged or that the defendants have violated the ... laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

III. Statutory and Regulatory Background

Plaintiff challenges Defendants alleged failures to implement certain provisions of the Radiation Control for Health and Safety Act of 1968, Pub. L. 90-602, 82 Stat. 1173 (Oct. 18, 1968), which is codified at 21 U.S.C. §§ 360hh, *et seq*. This legislative scheme applies to "electronic product[s]" that are defined to include:

> (A) any manufactured or assembled product which, when in operation, (i) contains or acts as part of an electronic circuit and (ii) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation, or
> (B) any manufactured or assembled article which is intended for use as a component, part, or accessory of a product described in clause (A) and which when in operation emits (or in the absence of effective shielding or other controls would emit) such radiation;

21 U.S.C. § 360hh(2). As Defendants note, "[i]n practical terms, this broad definition encompasses nearly any product that is powered by electricity, because all such devices can emit an electromagnetic field." ECF 9-1 at 8.

Section 360ii(a) provides that the Secretary of Health and Human Services "*shall* establish and carry out an electronic product radiation control program designed to protect the public health

and safety from electronic product radiation. As a part of such program, he *shall*—

> (1) *pursuant to section 360kk of this title, develop and administer performance standards for electronic products*;
>
> (2) plan, conduct, coordinate, and support research, development, training, and operational activities to minimize the emissions of and the exposure of people to, unnecessary electronic product radiation;
>
> (3) maintain liaison with and receive information from other Federal and State departments and agencies with related interests, professional organizations, industry, industry and labor associations, and other organizations on present and future potential electronic product radiation;
>
> (4) study and evaluate emissions of, and conditions of exposure to, electronic product radiation and intense magnetic fields;
>
> (5) develop, test, and evaluate the effectiveness of procedures and techniques for minimizing exposure to electronic product radiation; and
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> (6) *consult and maintain liaison with the Secretary of Commerce, the Secretary of Defense, the Secretary of Labor, the Atomic Energy Commission, and other appropriate Federal departments and agencies on (A) techniques, equipment, and programs for testing and evaluating electronic product radiation, and (B) the development of performance standards pursuant to section 360kk of this title to control such radiation emissions*."

21 U.S.C. § 360ii(a)(1)-(6) (emphasis added). This last subparagraph, § 360ii(a)(6), is the basis for Plaintiff's first claim.

With respect to performance standards, "[t]he Secretary *shall* by regulation prescribe performance standards for electronic products to control the emission of electronic product radiation from such products *if he determines that such standards are necessary for the protection of the public health and safety* …" and "*may* prescribe different and individual performance standards, *to the extent appropriate and feasible*, for different electronic products so as to recognize their different operating characteristics and uses." 21 U.S.C. § 360kk(a)(1)-(2) (emphasis added). "The Secretary *shall* establish a Technical Electronic Product Radiation Safety Standards Committee . . . which he *shall* consult before prescribing any [performance] standard under [§ 360kk]." 21 U.S.C. § 360kk(f)(1)(A). "The [Safety] Committee may propose electronic product radiation safety standards to the Secretary for his consideration." *Id*. § 360kk(f)(1)(B). This subparagraph concerning the Safety Committee is the basis for Plaintiff's second claim.

The FDA's regulations implementing this statutory scheme are set out at 21 C.F.R. §§

1000.00, *et seq*. (Chapter I, Subchapter J of Title 21). The electronic products subject to regulation include products that emit "x-rays or other ionizing electromagnetic radiation, electrons, neutrons, and other particulate radiation," "ultraviolet, visible, infrared, microwaves, radio and low frequency electromagnetic radiation," "coherent electromagnetic radiation produced by stimulated emission," and "infrasonic, sonic, and ultrasonic vibrations resulting from operation of electronic circuit." 21 C.F.R. § 1000.15. Examples of such products include television receivers, x-ray machines, black light sources, white light devices, remote control devices, cauterizers, burning and welding devices, communications transmitters, vibrators, and diagnostic and nondestructive testing equipment. *Id.*

The regulations contain specific performance standards for certain types of radiation-emitting electronic products. For example, there are specific performance standards for television receivers, diagnostic x-ray systems, radiographic equipment, fluoroscopic equipment, computed tomography equipment, cabinet x-ray systems, microwave ovens, laser products, sunlamp products and ultraviolet lamps intended for use in sunlamp products, and high-intensity mercury vapor discharge lamps. 21 C.F.R. §§ 1020.10-1020.40, 1030.10, 1040.10-1040.30. There are no specific performance standards for LED lights generally or LED headlamps specifically.

IV. Analysis

A. Standing – Rule 12(b)(1) Motion to Dismiss

Defendants' first argument for dismissal is that Plaintiff lacks standing because he cannot establish that his injuries are traceable to Defendants' conduct or redressable. ECF No. 9-1 at 13. Defendants state that Plaintiff contends he was injured by exposure to LED headlights, but not that the government exposed him to such headlights; rather, he alleges government inaction failed to prevent the exposure. *Id.* at 14. Defendants argue that Plaintiff has not plausibly alleged how a liaison between the FDA and the NHTSA concerning LED headlamps would have reduced his exposure. *Id*. at 14-15. Defendants contend that it is mere speculation that liaising between the FDA and NHTSA would have led the agencies to agree with Plaintiff or take some action to remedy his alleged injury. *Id.* at 15. Moreover, Defendants point out that they have already rejected Plaintiff's request for LED regulation in response to his citizen petitions. *See* Section II,

infra. As Defendants reason, neither the required liaison nor the constitution of the Safety Committee would be likely to change their decision not to regulate LEDs in the manner Plaintiff requests, further showing that redressability is lacking. ECF No. 9-1 at 15-16.

Plaintiff's response argues that he was injured by LED vehicle headlamps. He states that he first recalls it happening in 2015 with Cadillac headlights, which his psychological reaction to "was a feeling of evil, an emotion that Plaintiff had never felt before." ECF No. 10 at 3. Plaintiff claims the lights have a "photobiological, neurological, psychological and hormonal effect" and caused him to suffer a catastrophic mental breakdown. *Id.*

1. General Standing Requirements

"To establish [Article III] standing, a plaintiff must show it has suffered an 'injury in fact,' that the injury is 'fairly traceable' to the conduct at issue in the plaintiff's claim, and that 'it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Ctr. for Biological Diversity v. Exp.-Imp. Bank of the U.S.*, 894 F.3d 1005, 1012 (9th Cir. 2018) ("*Exp.-Imp. Bank*") (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 180–81 (2000). "[I]t is more difficult to establish causation or redressability in situations where 'a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*.'" *Id*. (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992)) (emphasis in original). Moreover, "[t]he causation requirement also rules out attenuated links—that is, where the government action is so far removed from its distant (even if predictable) ripple effects that the plaintiffs cannot establish Article III standing." *Food & Drug Admin. v. All. for Hippocratic Med*., 602 U.S. 367, 383 (2024).

If Plaintiff's standing in this case turned on these generic principles, it is likely that causation and redressability would be lacking. The defendant agencies have each independently declined to promulgate Plaintiff's requested regulations. It is speculative to believe they would change course if the Court were to order them to confer with each other on LED regulation or to order the FDA to reconstitute the Safety Committee. However, as explained below, Plaintiff's claims are governed by the relaxed standing requirements of the "procedural rights" doctrine. The Court accordingly examines Plaintiff's standing under that doctrine.

2. "Procedural Rights" Standing

Defendants argue the "procedural rights" doctrine does not apply to this case. ECF No. 9 at 12. As Defendant reasons, "the statutory provisions at issue in Counts I and II—specifically, 21 U.S.C. §§ 360ii(a)(6)(A) and 360kk(f)(l)(A)—do not 'accord[] [Plaintiff] a procedural right to protect [his] concrete interests.'" *Id*. at 12-13 (quoting *Douglas Cnty. v. Babbitt*, 48 F.3d 1495, 1500 (9th Cir. 1995)). "Nor were his interests 'threatened by' the government's conduct." *Id*. (quoting *Douglas Cnty.*, 48 F.3d at 1500). Plaintiff does not squarely engage with procedural rights case law, but explains why the relief he seeks could redress his injuries. ECF No. 10 at 4-5.

a. Background on the Procedural Rights Doctrine

"Plaintiffs bringing procedural-rights claims can establish standing without meeting all the normal standards for redressability … Specifically, a plaintiff pursuing violations of procedural rights need not establish the likelihood that the agency would render a different decision after going through the proper procedural steps." *Exp.-Imp. Bank*, 894 F.3d at 1012. Rather, "under the relaxed redressability standard for procedural-injury cases," a plaintiff need "only [] show that further [] consultation *may* influence the agency's ultimate decision of whether to take or refrain from taking a certain action. This is not a high bar to meet." *Ctr. for Biol. Diversity v. U.S. Bureau of Land Mgmt.*, 141 F.4th 976, 1011 (9th Cir. 2025) (citations and quotations omitted).

The causation inquiry is also "relaxed in cases involving procedural injuries," but "only in the sense that a plaintiff need not establish the likelihood that the agency would render a different decision after going through the proper procedural steps." *Id*. at 1008 (citation and quotations omitted). In a procedural rights case, "[t]he causation requirement is satisfied by showing a reasonable probability of the challenged action's threat to [the plaintiff's] concrete interest." *Nat'l Family Farm Coal. v. U.S. EPA*, 966 F.3d 893, 910 (9th Cir. 2020) (citations and quotations omitted).

b. This is a Procedural Rights Case

The Court first addresses the threshold question of whether this is a procedural rights case. Defendants' position is that § 360ii(a)(6)(A) and § 360kk(f)(l)(A) "do not 'accord[] [Plaintiff] a procedural right to protect [his] concrete interests.'" ECF No. 9-1 at 12-13 (quoting *Douglas*

Cnty., 48 F.3d at 1500). However, an agency's failure to engage in inter-agency consultation in the course of administrative decision-making is a circumstance to which the relaxed procedural rights standing doctrine applies. *See Ctr. for Biol. Diversity*, 141 F.4th at 1007 (applying relaxed procedural rights standing doctrine where the plaintiffs alleged that the defendant agency violated § 7 of the Endangered Species Act ("ESA") "by not consulting with" coordinate agencies on how a gas and oil project's "carbon emissions might affect protected species and their critical habitat" prior to approving that project).[4] Moreover, as *Douglas County* notes, the Supreme Court's seminal standing decision in *Lujan* recognizes two categories of procedural rights cases: (1) those where a statute expressly confers the procedural right, as with the citizen-suit provisions of the ESA, "which allow certain persons to sue and thus gives them a procedural right to ensure that statutory procedures are followed," and (2) those where people in close proximity to an alleged harm "have 'concrete interests' that give them the right to insure [sic] that agencies follow correct procedures." *Douglas Cnty.*, 48 F.3d at 1500 n.4 (citing *Lujan*, 504 U.S. at 572 & n.7). This case falls into the second of those categories. Plaintiff alleges in detail the manner in which his well-being is harmed by unregulated LED lights. Those health harms constitute a concrete interest, and one that he ties to Defendants' alleged failures to implement § 360ii(a)(6)(A) and § 360kk(f)(l)(A). The procedural requirements imposed by § 360ii(a)(6)(A) (inter-agency consultation) and § 360kk(f)(l)(A) (constitution of the Safety Committee), when read together in the context of Plaintiff's complaint, demonstrate that a relaxed standing inquiry is appropriate here.

c. Application of Procedural Rights Doctrine to Plaintiff's Claims

The Court now turns to analyzing Plaintiff's standing under each claim. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (a plaintiff must establish standing for "each claim" and "each form of relief"). Defendants do not contest that Plaintiff's allegations of health harms from LED lights satisfy the injury-in-fact requirement. Plaintiff's standing therefore

[4] "Section 7 [of the ESA] requires federal agencies to ensure that none of their activities ... will jeopardize the continued existence of listed species or adversely modify a species' critical habitat." *Karuk Tribe v. U.S. Forest Serv.*, 681 F.3d 1006, 1020 (9th Cir. 2012) (en banc).

turns on causation and redressability. As to both aspects of standing, Plaintiff effectively argues that if FDA and NHTSA were forced to consult with one another on LED regulation, and if the Safety Committee were properly constituted, Defendants could then decide to regulate LED lights, alleviating his harm. As explained below, Plaintiff has standing to pursue his first claim, but lacks standing as to his second claim.

As to causation, Plaintiff explains in detail in his pleadings and documents incorporated by reference the manner in which unregulated LED lights have harmed him, including with reference to concrete health harms. He has therefore shown "a reasonable probability" that Defendants' failure to regulate threatens his "concrete interest" in his own well-being. *Nat'l Family Farm Coal.*, 966 F.3d at 910. While motorists who use LED headlamps directly harmed Plaintiff, given that the agencies' regulatory mandates plainly encompass LED lights, this is not a case where "an injury caused by a third party is too tenuously connected to the [omissions] of the defendant." *Citizens for Better Forestry v. U.S. Dep't of Agriculture*, 341 F.3d 961, 975 (9th Cir. 2003); *see also Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1518 (9th Cir. 1992) ("The causation question concerns only whether plaintiffs' injury is dependent upon the agency's policy, or is instead the result of independent incentives governing [a] third part[y's] decisionmaking process.").

Plaintiff has also established redressability as to his First Cause of Action (failure to consult and liaise in violation of § 360ii(a)(6)(A)). Defendants point out that the defendant agencies have already independently declined to regulate in this area, despite Plaintiff's prior petitions. ECF No. 9-1 at 7. While that point is well taken, the consultation that Plaintiff believes is required by law could well result in a different outcome. That is particularly true where Plaintiff has submitted additional petitions and supporting materials that have not yet been evaluated by the defendant agencies. Plaintiff also highlights that NHTSA never engaged in a rulemaking process for LED vehicle headlamps, suggesting consultation with FDA might lead to such rulemaking. These circumstances all show that the injury Plaintiff complains off may be redressable through judicial action, which is all that is required under the applicable relaxed redressability inquiry. *See Friends of the Santa Clara River v. U.S. Army Corps of Engineers*, 887 F.3d 906, 919-920 (9th Cir. 2018)

("plaintiffs need only show a *reasonable probability* that the Corps' decision *could be influenced* by the environmental considerations that NEPA requires an agency to study") (citations and quotations omitted and emphasis added); *see also Citizens for Better Forestry*, 341 F.3d at 976 (finding the plaintiff had met their "relatively easy burden" where "it is *probable* that if USDA had allowed Citizens to participate in its environmental review at some point, or had complied with the ESA formal consultation requirement, this *could have influenced* its decision" on a proposed rule) (emphasis added).

However, Plaintiff fails to show redressability for his Second Cause of Action (disbanding the Safety Committee in violation of § 360kk(f)(l)(A)). Construing that cause of action in the light most favorable to Plaintiff, it is a claim that the Secretary has failed to maintain the Safety Committee at full strength as required by law.[5] For example, Plaintiff alleges that the Safety Committee has only four members, where by statute it should have fifteen members. But even if the Court were to ultimately order the Secretary to appoint additional members, that would not make it reasonably probable that such additional members could influence Defendants decision whether to regulate LED lights specifically. The possibility that the additional members would recommend LED regulation is too speculative to meet the redressability requirement, even under the relaxed standards of the procedural rights doctrine. Plaintiff lacks standing to pursue his Second Cause of Action. Having determined that Plaintiff has standing to pursue his First Cause

[5] Substantively, this would be the strongest footing for Plaintiff's claim, as there is no other statutorily-required action as to the Safety Committee that the Secretary has not undertaken. For example, § 360kk(f)(1)(A) provides that "[t]he Secretary shall establish a Technical Electronic Product Radiation Safety Standards Committee . . . which he shall consult before prescribing any [performance] standard under [§ 360kk]." But Plaintiff does not allege that the Secretary did not establish the Safety Committee. Nor does Plaintiff allege that the Secretary has not consulted with the Safety Committee before prescribing specific performance standards. Moreover, while Plaintiff claims the Safety Committee was unlawfully dissolved, judicially noticeable documents refute that allegation. The FDA renewed the Safety Committee's charter in January of 2023. *See* Notice; Renewal of Federal Advisory Committee, 88 Fed. Reg. 4190-01, 2023 WL 359066 (Jan. 24, 2023). In so doing, the FDA reiterated that the Committee "provides advice and consultation" to FDA "on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products." *Id.* Nor has Plaintiff plausibly alleged that the Safety Committee cannot consult with the FDA even when it is not fully constituted; the statute contains no express quorum requirement.

of Action, the Court will now proceed to the analysis under Rule 12(b)(6) of whether Plaintiff has stated a claim.

B. Review of Agency Inaction – Rule 12(b)(6) Motion to Dismiss

The APA provides for review and a remedy when an agency fails to act: "The reviewing court shall ... compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). To state a claim under 706(1), a plaintiff must plausibly allege "that an agency failed to take a discrete action that it is required to take." *Norton v. S. Utah Wilderness All*., 542 U.S. 55, 64 (2004). "A court can compel agency action . . . only if there is a specific, unequivocal command placed on the agency to take a discrete agency action, and the agency has failed to take that action." *Vietnam Veterans of Am. v. Cent. Intel. Agency*, 811 F.3d 1068, 1075 (9th Cir. 2016) (internal marks and citation omitted). "The agency action must be pursuant to a legal obligation so clearly set forth that it could traditionally have been enforced through a writ of mandamus." *Id.* at 1075-76 (citation and quotation omitted).

Section 360ii(a)(6) provides that the Secretary "shall … consult and maintain liaison with the Secretary of Commerce, the Secretary of Defense, the Secretary of Labor, the Atomic Energy Commission, and other appropriate Federal departments and agencies on (A) techniques, equipment, and programs for testing and evaluating electronic product radiation, and (B) the development of performance standards pursuant to section 360kk of this title to control such radiation emissions." Plaintiff claims that the FDA violates this statute by failing to consult with the NHTSA on the developing of performance standards for LED lights. Plaintiff reasons that because LED headlamps "emit electromagnetic radiation," ECF No 1. ¶ 62, the statute effectively requires FDA to "consult and maintain [a] liaison" with NHTSA specifically "for LED vehicle headlamps," *id*. ¶ 66. In basic terms, Plaintiff contends that FDA and NHTSA must consult and liaise on LED headlamps simply because those products "emit electromagnetic radiation." *Id*. ¶ 62. Plaintiff accordingly concludes that the agencies' failure to liaise on this subject constitutes "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1).

Contrary to Plaintiff's reading, 21 U.S.C. § 360ii(a)(6)(A) does not contain a discrete, mandatory directive for FDA to act with respect to any specific type of radiation-emitting

product, such as LED lights generally or LED headlamps specifically. Section 360ii(a)(6)(A) contains only a broad, generalized requirement that FDA "shall . . . consult and maintain liaison with . . . appropriate Federal departments and agencies on techniques, equipment, and programs for testing and evaluating electronic product radiation." *Id*. The FDA has, in fact, consulted with federal agencies. For example, Defendants show that the FDA consulted with the Federal Communications Commission on standards related to "wireless power transfer" devices. ECF 9-1 at 29 n.8. As Defendants succinctly point out, "[w]hile Plaintiff is correct that the statute contains a 'non-discretionary' requirement, he is mistaken about the nature and scope of that requirement." *Id*. at 29 (citations omitted).

Other statutory provisions demonstrates that Congress did not require the FDA to engage in the regulation of LED lights specifically. For example, 21 U.S.C. § 360jj(a)(1)(c) requires the FDA to study potential regulation of x-ray technology. By showing that Congress directed regulation of specific products when it so intended, this statute supports the idea that Congress did not intend to create product-specific requirements under § 360ii(a)(6). ECF No. 9-1 at 29 (citing *Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita Inc*., 596 U.S. 880, 887 (2022) ("Congress knew how to write such a law," but it "did not do so in this statute"), and *City of Arlington, Tex. V. F.C.C*., 569 U.S. 290, 296 (2013) ("Congress knows to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion.")).

Reviewing the context and overall scheme of the statute, as the Court is required to do, Plaintiff's argument is even more implausible. Plaintiff's reading would arguably require the FDA to engage in inter-agency consultations for each of the innumerable everyday electronic products that emit radiation. This reading would be irreconcilable with § 360kk(a), which gives the FDA discretion to publish performance standards for electronic products only if it deems them "necessary for the protection of the public health and safety." This kind of relatively broad discretion is incompatible with an argument that the FDA violates the law by failing to consult and liaise on LED lights specifically.

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C. Leave to Amend

A pro se litigant like Plaintiff is entitled to notice of the deficiencies in the complaint and an opportunity to amend, unless the complaint's deficiencies could not be cured by amendment. *See Akhtar v. Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012). Plaintiff filed the complaint in this case shortly after moving to voluntarily dismiss a related case in the wake of a hearing on the defendants' motion to dismiss in that case. *See supra* n.3. That case also concerned the FDA's failure to regulate LED lights, included similar causes of action as set out in this case, and included several of the same defendants. The complaint in the instant case is in substance an amendment of the complaint in that earlier case, which narrowed the scope of Plaintiff's causes of action while adding the NHTSA defendants. The fact that Plaintiff has now filed two similar actions counsels against further amendment. Moreover, Plaintiff has not suggested facts in opposition that would cure the defects identified in Defendants' instant motion to dismiss. For these reasons, further amendment would be futile.

V. CONCLUSION

For the foregoing reasons, **IT IS HEREBY RECOMMENDED** that:

1. Defendant's Motion to Dismiss (ECF No. 9) be GRANTED without leave to amend; and
2. The Clerk be directed to enter judgment and close this file.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). **Within fourteen days** after being served with these findings and recommendations, either party may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may result in waiver of the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: September 16, 2025

SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE